IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9229 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRANKUMAR SURYAKANT DOSHI

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9229 of 2004

MR KAMLESH B MEHTA for Applicant

MR BHAVESH N DAVE for Applicant

MR RC KODEKAR, APP for Opponent

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/10/2004

ORAL JUDGEMENT

Rule. Mr.R.C.Kodekar, learned APP waives service

of notice of rule on behalf of the opponent-State.

2. The applicant by way of filing this application has prayed to cancel condition No.6(a) of the order dated 2-7-2004 passed in Criminal Misc. Application No.4480 of 2004. Notice was issued by this Court vide order dated 1-10-2004 making it returnable today.

3. Learned counsel for the applicant has argued that financial condition of the applicant is not good and therefore, in spite of strenuous efforts, the petitioner is not in a position to comply with the condition No.6(a) of the order dated 2-7-2004 passed in Cri. Misc. Appln. No.4480 of 2004.

4. It is required to be noted that now-a-days a trend has developed in the minds of accused to defraud the bank and other people and thereafter to stand before the Court with a request to grant bail on such conditions as the Court deems fit. After having obtained bail in their favour, the accused are coming before the Court by filing an application for modification of the conditions imposed by the Court while releasing the accused on bail.

5. In the present case, the applicant has not only defrauded the Bank but has also disobeyed the conditions imposed by this Court while releasing him on bail. The present applicant had filed Cri.Misc.Appln.No.4480 of 2004 under Sec.439 of the Code of Criminal Procedure in this Court. Same was allowed by this Court vide order dated 2-7-2004 with some conditions. Paras 4 and 5 of the said order read as under:

"4. Learned counsel for the applicant, Mr.K.B.Mehta, has made a statement at the bar that the applicant is ready and willing to deposit an amount of Rs.20.00 lakhs (Rupees Twenty Lacs only) with the complainant bank within one month from the date of his release. He has made it clear that the applicant will deposit Rs.5.00 lakhs (Rupees Five Lacs only) within ten days from the date of his release and balance of Rs.15.00 lakhs (Rupees Fifteen Lacs only) within twenty days thereafter. He has assured on behalf of the applicant that the applicant will pay rest of the amounts as per the Schedule decided jointly by the bank as well as the applicant. He has also assured that an undertaking to the above effect would be filed by the applicant before this Court after serving a copy thereof to the complainant bank within a

week of his release.

5. In view of the aforesaid statements made and the assurance given by the learned counsel for the applicant, since the dues of the bank as aforesaid has been protected, the applicant is required to be released on bail."

It is clear from the aforesaid that conditions 6(a) and 6(b) have been imposed by this Court based on the voluntary statements made on behalf of the applicant by his counsel, Mr.K.B.Mehta, who has filed the present application. Not only that, the petitioner came out from judicial custody in view of the aforereferred order since long. However, till date, he has not deposited even a single rupee with the bank. It is also not on record as to whether the applicant has filed an undertaking vide condition No.6(b) imposed by this Court in said order. This being the position, it is unfortunate on the part of both the prosecution and the complainant bank that though the applicant was released vide order dated 2-7-2004, they have not taken any further steps. Now he has filed the application for deletion of condition No.6 (a) of the order dated 2-7-2004. It is true that the accused are entitled for deletion/modification of the conditions if there is some change in circumstances. In the present case, no such change in circumstances is pointed out by the learned counsel for the petitioner.

6. Inspite of the aforesaid, this Court has asked specific question to the learned counsel for the applicant that if the applicant is ready even today to deposit some amount towards bank dues, this Court would consider modifying the order passed by this Court. However, Mr.K.B.Mehta has stated that it will not be possible to deposit any amount.

7. Having regard to the aforesaid facts and circumstances of the case, since the applicant has not complied with the conditions imposed by this Court pursuant to the voluntary statements made by the learned counsel on his behalf and is not ready even today to deposit some amount towards bank dues, condition No.6(a) of the order dated 2-7-2004 passed in Cri.Misc.Appln.No.4480 of 2004 cannot be modified. Hence, this application is required to be rejected.

8. This application is rejected. Rule is discharged. Court below is free to take action forthwith as ordered vide para 7 of the order dated 2-7-2004 passed in Cri.Misc.Appln.No.4480 of 2004.

9. Copy of this order be sent to concerned Sessions Judge for doing the needful.

(R.P.DHOLAKIA,J.)

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